



February 14, 2007

HOUSE BILL No. 1384

DIGEST OF HB 1384 (Updated February 12, 2007 6:08 pm - DI 107)

Citations Affected: IC 5-2; IC 11-8; IC 34-6; IC 34-24; IC 35-45; IC 35-50.

Synopsis: Criminal gangs. Changes the definition of "criminal gang", for purposes of certain criminal statutes, to provide that a criminal gang consists of at least three members (instead of five members). Makes it a Class D felony for an individual to solicit, recruit, entice, or intimidate another individual to join a criminal gang. Makes criminal gang recruitment a Class C felony if: (1) the solicitation, recruitment, enticement, or intimidation to join a criminal gang occurs within 1,000 feet of school property; or (2) the individual being solicited, recruited, enticed, or intimidated to join a criminal gang is less than 18 years of age. Requires a court to order a criminal gang member to make restitution to a victim of a felony or misdemeanor committed by the criminal gang member. Provides that a victim or certain entities have a civil cause of action against a criminal gang member for the commission of a felony or misdemeanor by the criminal gang member. Requires the criminal justice institute to develop, maintain, and identify grants and other funds for the criminal gang witness protection program (program). Establishes a program to provide a person who witnesses criminal gang crime with certain expenses. Requires the department of correction to develop and maintain the criminal gang data base to assist law enforcement with the exchange of information regarding criminal gangs. Requires the department of correction and the criminal justice institute to identify grants and other funds to operate the criminal gang data base.

Effective: July 1, 2007.

Lawson L, Ulmer, Foley, Koch

January 16, 2007, read first time and referred to Committee on Judiciary.
February 13, 2007, amended, reported — Do Pass.

HB 1384—LS 6674/DI 106+



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February 14, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1384

A BILL FOR AN ACT concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-6-3, AS AMENDED BY P.L.173-2006,
- 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2007]: Sec. 3. The institute is established to do the following:
- 4 (1) Evaluate state and local programs associated with:
- 5 (A) the prevention, detection, and solution of criminal
- 6 offenses;
- 7 (B) law enforcement; and
- 8 (C) the administration of criminal and juvenile justice.
- 9 (2) Improve and coordinate all aspects of law enforcement,
- 10 juvenile justice, and criminal justice in this state.
- 11 (3) Stimulate criminal and juvenile justice research.
- 12 (4) Develop new methods for the prevention and reduction of
- 13 crime.
- 14 (5) Prepare applications for funds under the Omnibus Act and the
- 15 Juvenile Justice Act.
- 16 (6) Administer victim and witness assistance funds.
- 17 (7) Administer the traffic safety functions assigned to the institute
- 18 under IC 9-27-2.

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(8) Compile and analyze information and disseminate the information to persons who make criminal justice decisions in this state.

(9) Serve as the criminal justice statistical analysis center for this state.

(10) Identify grants and other funds that can be used by the department of correction to carry out its responsibilities concerning sex offender registration under IC 11-8-8.

(11) Administer the application and approval process for designating an area of a consolidated or second class city as a public safety improvement area under IC 36-8-19.5.

(12) Develop and maintain a meth watch program to inform retailers and the public about illicit methamphetamine production, distribution, and use in Indiana.

(13) Develop and manage the gang crime witness protection program under section 19 of this chapter.

(14) Identify grants and other funds that can be used to fund the gang crime witness protection program.

(15) Identify grants and other funds that can be used by the department of correction and law enforcement agencies to carry out responsibilities concerning the statewide criminal gang data base under IC 11-8-2-14.

SECTION 2. IC 5-2-6-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 19. (a) The gang crime witness protection program is established.**

(b) The gang crime witness protection program established by subsection (a) shall be developed and maintained to assist witnesses of gang crimes with:

- (1) temporary living costs;**
- (2) moving expenses;**
- (3) rent;**
- (4) security deposits; and**
- (5) other appropriate expenses for relocation or transitional housing.**

(c) The institute shall develop and maintain procedures to award funds for the purposes described in subsection (b) to an individual who witnesses a gang crime.

(d) The institute shall adopt rules under IC 4-22-2 to implement this section.

(e) The director of the Indiana criminal justice institute may delay the implementation of this section until the earlier of the

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following:

(1) A date set by the director.

(2) The date funding becomes available by a grant through the criminal justice institute or by an appropriation from the general assembly.

If the director of the criminal justice institute delays implementation of this section, the director shall notify each prosecuting attorney of the director's action.

SECTION 3. IC 5-2-6-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 20. (a) The gang crime witness protection fund is established. The institute shall administer the fund.

(b) The institute shall use money in the fund for costs described in section 19(b) of this chapter.

(c) The institute shall identify grants and other funds that can be used to fund the gang crime witness protection program under section 19 of this chapter.

(d) Money in the gang crime witness protection fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 4. IC 11-8-2-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14. (a) The department shall develop and manage a statewide criminal gang data base.

(b) The statewide criminal gang data base established by subsection (a) shall be developed and maintained to assist law enforcement in the exchange of information concerning:

(1) membership in criminal gangs;

(2) arrest records and criminal convictions of criminal gang members;

(3) activities of criminal gangs; and

(4) other information that can assist law enforcement with monitoring criminal gangs.

(c) The department shall develop and maintain procedures to obtain and disburse information regarding criminal gangs.

(d) The department shall adopt rules under IC 4-22-2 to implement this section.

(e) The department and the criminal justice institute shall identify grants and other funds that can be used by the department and law enforcement agencies to carry out responsibilities concerning the statewide criminal gang data base.

SECTION 5. IC 34-6-2-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 32. "Criminal gang",

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for purposes of:

(1) section 6 of this chapter; **and**

(2) **IC 34-24-5;**

has the meaning set forth in IC 35-45-9-1.

SECTION 6. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 5. Criminal Gang Liability

Sec. 1. (a) A person who:

(1) commits or conspires to commit a crime; and

(2) is a criminal gang member;

is liable for civil damages as provided in this chapter.

(b) A law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency or the state is not liable under this chapter for actions that further an official investigation of a criminal gang.

Sec. 2. The following persons may bring an action for damages concerning a crime committed by a person described in section 1(a) of this chapter:

(1) A victim of the crime.

(2) A:

(A) parent;

(B) legal guardian;

(C) child;

(D) spouse; or

(E) sibling;

of a victim of the crime.

(3) A medical facility, insurer, governmental entity, employer, law enforcement agency, fire department, emergency medical service provider, or other entity that spends any funds or uses any resources:

(A) investigating; or

(B) responding to an incident related to; the crime.

(4) A person injured as a result of the willful, reckless, or negligent actions of a person described in section 1(a) of this chapter in the course of committing the crime.

(5) Any neighborhood association registered with the municipal governing body, the official geographic boundaries of which encompass the location where the crime occurred.

Sec. 3. A complaint under section 2 of this chapter may be amended at any time to add additional defendants who committed

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or conspired to commit the crime.

Sec. 4. A person described in section 2(1) through 2(5) of this chapter may recover the following damages:

(1) Economic damages, including costs for the following:

(A) Treatment and rehabilitation.

(B) Medical expenses.

(C) Loss of economic or educational potential.

(D) Loss of productivity.

(E) Absenteeism.

(F) Support expenses.

(G) Accidents or injury.

(H) Any other pecuniary loss proximately caused by the felony or misdemeanor.

(2) Noneconomic damages, including costs for the following:

(A) Physical and emotional pain and suffering.

(B) Physical impairment.

(C) Emotional distress.

(D) Medical anguish.

(E) Disfigurement.

(F) Loss of enjoyment.

(G) Loss of companionship, services, and consortium.

(H) Any other nonpecuniary loss proximately caused by the felony or misdemeanor.

(3) Exemplary damages.

(4) Reasonable attorney's fees.

(5) Court costs, including reasonable expenses for expert testimony.

Sec. 5. (a) An action by an individual brought under this chapter is governed by the principles of comparative liability under Indiana law. Comparative liability attributed to a plaintiff does not bar recovery, but diminishes the award of compensatory damages proportionally according to the measure of responsibility attributed to the plaintiff.

(b) The burden of proving the comparative liability of the plaintiff in an action brought under this chapter:

(1) is on the defendant; and

(2) must be shown by clear and convincing evidence.

Sec. 6. (a) A person who is subject to liability under this chapter has a right of action for contribution against another person subject to liability under this chapter.

(b) Contribution may be enforced in:

(1) the original action; or

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(2) a separate action brought for that purpose.

(c) A plaintiff may seek recovery under this chapter and any other applicable law against a person whom a defendant has asserted a right of contribution.

Sec. 7. Proof of the commission of or conspiracy to commit a crime by a criminal gang member must be shown by clear and convincing evidence. Unless otherwise provided in this chapter, other elements of an action brought under this chapter must be shown by a preponderance of the evidence.

Sec. 8. (a) Subject to subsection (c), a plaintiff in an action brought under this chapter may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. If attachment is instituted, a defendant is entitled to an immediate hearing. Attachment may be lifted if the defendant:

(1) demonstrates that the defendant's assets will be available for a potential award; or

(2) posts a bond in an amount that is sufficient to cover a potential award.

(b) A person against whom a judgment has been rendered under this chapter may not exempt any property from process to levy or process to execute on the judgment.

(c) Any assets that are:

(1) sought to satisfy a judgment under this chapter; and

(2) involved in a forfeiture action or that have been seized for forfeiture by any state or federal agency;

may not be used to satisfy a judgment until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

Sec. 9. (a) Except as otherwise provided in this section, a claim under this chapter must be brought not more than two (2) years after the date the criminal gang member is convicted of the underlying felony or misdemeanor.

(b) The statute of limitations under this section is tolled for a plaintiff while the individual potential plaintiff is incapacitated due to injury resulting from the underlying felony or misdemeanor.

Sec. 10. The attorney general may represent the state or a political subdivision of the state in an action brought under this chapter.

Sec. 11. This chapter may not be construed to alter any law regarding tort immunity within a family.

SECTION 7. IC 35-45-9-1 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. As used in this chapter, "criminal gang" means a group with at least ~~five (5)~~ **three (3)** members that specifically:

(1) either:

(A) promotes, sponsors, or assists in; or

(B) participates in; or

(2) requires as a condition of membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

SECTION 8. IC 35-45-9-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5. (a) Except as provided in subsection (b), an individual who knowingly or intentionally solicits, recruits, entices, or intimidates another individual to join a criminal gang commits criminal gang recruitment, a Class D felony.**

(b) The offense under subsection (a) is a Class C felony if:

(1) the solicitation, recruitment, enticement, or intimidation occurs within one thousand (1,000) feet of school property; or

(2) the individual who is solicited, recruited, enticed, or intimidated is less than eighteen (18) years of age.

SECTION 9. IC 35-45-9-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 6. In addition to any sentence or fine imposed on a criminal gang member for committing a felony or misdemeanor, the court shall order a criminal gang member convicted of a felony or misdemeanor to make restitution to the victim of the crime under IC 35-50-5-3.**

SECTION 10. IC 35-50-2-1.4, AS ADDED BY P.L.109-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1.4. For purposes of section 15 of this chapter, "criminal gang" means a group with at least ~~five (5)~~ **three (3)** members that specifically:

(1) either:

(A) promotes, sponsors, or assists in; or

(B) participates in; or

(2) requires as a condition of membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1384, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1384 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 8, nays 0.

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